



October 4, 2019

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Communication: WC Docket Nos. 17-287, 11-42, 09-197

Dear Ms. Dortch:

On October 2, 2019, Jeb Benedict and Tiffany Smink of CenturyLink, Ann Morrison of Consolidated Communications, Michelle Owens of Blackfoot,¹ and Genny Morelli and the undersigned of ITTA met with Travis Litman of the Office of Commissioner Rosenworcel regarding the Lifeline item circulated on August 19, 2019 for the Commissioners' consideration and vote.² To the extent trade press reports indicate that the item addresses the Lifeline Representative Accountability Database (RAD),³ we raised concerns regarding the potential impacts of implementation of the RAD on the privacy and security of ITTA members' employees' personally identifiable information (PII), expressed that the scope of who may have to register with the RAD and what information they may have to provide is overbroad, and noted the Commission's need to secure Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (PRA) for any RAD registration requirement.

The ITTA members represented on the call, at a minimum, share the common characteristics of being facilities-based carriers that use company employees to handle Lifeline enrollments, and that do not offer sales incentives to such company employees specifically for Lifeline enrollments. As such, we expressed that companies such as these handling Lifeline enrollments in this manner are not the intended targets of the safeguards promoted by the RAD. In directing the Universal Service Administrative Company (USAC) to establish the RAD, Chairman Pai referred to an FCC Inspector General determination "that the payment structure that many Lifeline resellers use to compensate sales agents can create substantial incentives for fraud," and directed USAC to "require each sales agent to register with USAC with sufficient information so that USAC can verify the agent's identity and determine the ETC(s) he or she

¹ Ms. Smink, Ms. Morrison, and Ms. Owens participated by telephone.

² FCC, FCC Items on Circulation, <https://www.fcc.gov/items-on-circulation> (last visited Oct. 4, 2019).

³ See, e.g., Monica Hogan, *FCC Circulates Proposed Order and FNPRM to Curb Lifeline Waste, Fraud and Abuse*, Comm. Daily, Aug. 20, 2019, https://communicationsdaily.com/article/view?search_id=324454&stack=stack_5d76daf151882&id=582326 (subscription required) (Aug. 20 Comm. Daily Article).

works for.”⁴ Aside from the Chairman Pai Letter contemplating that such sales agents, unlike company employees, may be working for more than one ETC, the subsequent *2017 Lifeline NPRM* specifically distinguished company “employees” from “agents.”⁵

We contended that not only should the Chairman Pai Letter be read only to apply to non-employee sales agents, but that experience with Lifeline program sales abuses has shown that the vast majority have involved non-employee sales agents. Further complications may arise from subjecting company employees to RAD registration requirements insofar as union agreements may not allow for company employees’ PII to be subject to disclosure requirements outside of the company, and companies may be subject to liability for any ramifications in the event of a data breach involving personal information their employees were required to furnish in the course of their employment. We acknowledged recent alleged violations by a mobile Lifeline provider of the Lifeline “non-usage” rule,⁶ but explained how a RAD registration requirement applicable to company employees involved in the Lifeline enrollment or recertification process would not have helped to prevent the alleged violations nor enhanced regulators’ ability to detect them.

In the event company employees are required to register with the RAD, we challenged the yawning breadth of employees that would be required to register,⁷ and advocated that they should not be required to register using PII. In light of the company being readily traceable when enrollments are performed by a company employee, the required registration information for company employees should be limited to employee name, confirmation of employee status, and an indication of the ETC of which the registrant is an employee.⁸ At most, the company employee registrant should additionally be required to furnish a unique business telephone number, business email address, and/or company-issued identification number.⁹ In contrast, the RAD is contemplated to collect a registering employee’s birthdate, portion of Social Security

⁴ Letter from Ajit V. Pai, Chairman, FCC, to Vickie Robinson, Acting CEO and General Counsel, USAC, at 4 (July 11, 2017) (Chairman Pai Letter).

⁵ *Bridging the Digital Divide for Low-Income Consumers; Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475, 10506, para. 91 (2017) (*2017 Lifeline NPRM*).

⁶ See Press Release, FCC, FCC Learns that Sprint Received Tens of Millions in Lifeline Subsidies—But Provided No Service (Sept. 24, 2019), <https://docs.fcc.gov/public/attachments/DOC-359820A1.pdf>.

⁷ USAC, Representative Accountability Database (RAD), <https://www.usac.org/li/rad/default.aspx> (last visited Oct. 4, 2019).

⁸ Registrants with the RAD will be required to certify under penalty of perjury that their registration information is accurate. See USAC, *RAD: Registration and Linking Accounts, Lifeline Program Update*, at 16 (June 12, 2019), <https://www.usac.org/res/documents/li/training/2019/Lifeline-Program-Webinar-June.pdf> (USAC June 12 Webinar PowerPoint).

⁹ See Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket Nos. 17-287, 11-42, 09-197, at 7 (Feb. 21, 2018) (ITTA Comments) (so long as USAC may hold the ETC accountable, “some other identifier in addition to specification of the ETC [the employee] is representing, such as a unique business telephone number, should be sufficient”).

number, and residential address.¹⁰ Even more daunting is the information USAC would require in the event of a purported “identity error” in registration.¹¹ These concerns are exacerbated by the lack of any indication how USAC will store and safeguard information transmitted to it in the event of a registration error,¹² and the registrant’s required certification that “you agree that all of the information you are providing may be . . . shared . . . by USAC for the purposes of applying for and a receiving a Representative ID,”¹³ without any indication of who USAC would share such information with and under what circumstances and protections.

ITTA continues to laud the Commission’s drive to address the waste, fraud, and abuse that have beleaguered the Lifeline program.¹⁴ However, in a time when massive data breaches are a nearly daily occurrence, requiring company employees to provide PII to another repository that could be breached, as were government employee records in the Office of Personnel Management breach, is an undue risk when the employee can provide sufficient non-PII to be tracked via traceability to his or her ETC. As ITTA commented in response to the *2017 Lifeline NPRM*, if “USAC or the Commission audits the submissions by a certain ETC, either the ETC will stand by the submission, or it will disclaim the legitimacy of the submission and thereby forfeit the Lifeline support associated with the submission.”¹⁵ Therefore, with the enrollment traceable to the ETC, nothing more should be required than the ETC’s certification that the enrollment was performed by a company employee where that is the case. And if company employees nevertheless are required to register with the RAD, traceability of the enrollments to an ETC’s employee, and having the ETC responsible for the enrollments, render any requirement for an ETC’s employee to furnish PII in registering with the RAD a risk and burden that far eclipses any traceability benefit that would be derived.¹⁶

¹⁰ See USAC June 12 Webinar PowerPoint at 12. “[A]llow[ing] other information such as driver’s license numbers instead” to be used for employee registration with the RAD, Aug. 20 Comm. Daily Article, would be no less invasive than what USAC has been contemplating to collect. This underscores the need for the Commission to afford ITTA and other interested parties full input into a transparent process for establishing any RAD registration requirement. See *infra* p.4.

¹¹ See USAC June 12 Webinar PowerPoint at 20-22. For instance, in the event of an “identity not found,” the registrant would need to mail USAC copies of documentation such as driver’s license, W-2 form, Social Security Card, passport, weapons permit, and/or unemployment/workers’ compensation statement of benefits.

¹² Of course, where company employees are involved in enrollments, the need for such further submissions should be obviated by holding the ETC accountable for any enrollment irregularities by its employees.

¹³ *Id.* at 16.

¹⁴ See ITTA Comments at 5.

¹⁵ *Id.* at 6.

¹⁶ To the extent the order might “prohibit telecom carriers from paying commissions to employees or sales agents based on the number of consumers who apply for Lifeline,” Aug. 20 Comm. Daily Article, requiring company employees to register with the RAD tilts the cost-benefit analysis even further towards the costs side, insofar as eliminating the incentive to fraudulently inflate Lifeline sales should result in waste, fraud, and abuse diminishing to a degree that there is little of it to investigate using information from the RAD.

Ms. Marlene H. Dortch
October 4, 2019
Page 4

We asserted that before implementing any RAD registration requirement, the Commission must secure OMB approval under the PRA for this particular information collection and the use of the information in this particular database.¹⁷

To address all of the concerns we identified, the Commission should exempt company employees from the RAD registration requirement. If company employees are deemed subject to RAD registration requirements, only those employees directly interfacing with the NLAD and/or National Verifier should be required to register, and company employees should not be required to submit any PII as part of the registration process. The process for delineating any RAD registration requirement should be open and transparent, with ITTA and other interested parties being afforded full opportunity to provide input into shaping such a requirement's contours.

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/

Michael J. Jacobs
Vice President, Regulatory Affairs

cc: Travis Litman

¹⁷ Among the things the FCC must specify when seeking OMB approval of an information collection under the PRA are a "Privacy Act Impact Assessment," "Nature and Extent of Confidentiality," and "Needs and Uses" for the information collection. Submissions to OMB related to the Lifeline program since issuance of the Chairman Pai Letter have been too vague regarding a potential registration database to be credibly considered to have been approved by OMB, and they certainly did not include the critical analyses that are designed precisely to protect individuals from unnecessary exposure of private and sensitive information.